

February 12, 2019

Mr. Henry Leskinen
Eco-Science Professionals Inc.
P O Box 5006
Glen Arm MD 21057

Re: Kimco, Fullerton Plaza, 7927 Belair Rd. 21236
Fitness Center Construction
Forest Conservation Variance
Tracking # 05-19-2910

Dear Mr. Leskinen:

A request for a variance from the Baltimore County Forest Conservation Law was received by the Department of Environmental Protection and Sustainability (EPS) on January 22, 2019. The request proposes to base the forest conservation requirements for the referenced project on the 4.3-acre limits of disturbance rather than the entire 18.4-acre site. The proposed development project involves construction of a fitness center, reconfiguration of an existing parking lot, and improvements to an existing stormwater management pond at an existing shopping center. A portion of the existing parking lot to be reconfigured is located within forest buffer, but there are no proposed impacts to streams, wetlands, forests, or specimen trees.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. This shopping center property existed in the current layout prior to the forest conservation law. Application of the law to the entire property would not result in unwarranted hardship to the applicant as the development could be completed if required to comply with the law for the entire property, and beneficial use of the property would remain with or without the development. Therefore, denying this variance request would not deprive the applicant of a reasonable use of the property and this criterion is not met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions in the neighborhood. The request for a variance is due to a unique situation concerning this existing shopping center site

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and the addition of a new business with building, parking lot, and stormwater management construction. The variance request is related to the commercial uses on this property, and is not related to general conditions of the neighborhood. Therefore, this criterion is met.

The third criterion (Subsection 33-6-116 (d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. This shopping center property has existed for many years in the current layout, and the proposed development will continue the same commercial uses. The essential character of the neighborhood will remain the same following this proposed development, and the proposed uses would be compatible with the neighborhood. Therefore, this criterion is met.

The fourth criterion (Subsection 33-6-116 (e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The required forest buffer extends into an existing parking lot on the property. This parking lot is being reconfigured and part of the lot near the stream will be removed and vegetated. There are no proposed stream, wetland, forest, or specimen tree impacts. Also, the project must meet stormwater management requirements. Therefore, granting of the special variance will not adversely affect water quality and this criterion is met.

The fifth criterion (Subsection 33-6-116 (e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance which is the result of actions taken by the petitioner. There have been no actions taken by the petitioner on this property that have required this variance request. Therefore, this criterion is met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Allowing the forest conservation obligation to be based on the limit of disturbance for this shopping center redevelopment would be consistent with the spirit and intent of the Forest Conservation Law. This is especially true given that no impacts to forest or adverse impacts to water quality would result from the proposed development. Therefore, this criterion is met.

Based on our review, this Department finds that the required criteria have been met. Therefore, the requested variance is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. A note must be shown on all plans stating: "A forest conservation variance was granted by the Baltimore County Department of Environmental Protection and Sustainability on February 12, 2019 to allow the forest conservation requirements for this fitness center project to be based on the limits of disturbance rather than the entire site acreage. Conditions were placed on this approval to ensure that the project met the goals and objectives of the Forest Conservation Law. This variance is for this activity only and does not exempt future development on this property from the Baltimore County Forest Conservation Law."

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2. A forest conservation plan (FCP), including a forest conservation worksheet, must be submitted, and approved by EPS prior to issuance of any permits.
3. This variance is for this activity only and does not exempt future development on this property from the Baltimore County Forest Conservation Law.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and an amended variance request.

Please have the property owner sign the statement at the end of this letter and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Paul Dennis at (410) 887-3980.

Sincerely yours,

David V. Lykens
Acting Director

DVL/pad

c: Marian Honeczy MDDNR

I/we agree to the above conditions to bring my/our property into compliance with Baltimore County Forest Conservation Law.

Property Owner(s) Signature(s)

Date

Printed Name(s)